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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/901,315	07/09/2001	Q. Peter Zhang	17656 USA	7760

7590 10/08/2002

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EXAMINER

MAI, TRI M

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 10/08/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/901,315

Applicant(s)

ZHANG ET AL.

Examiner

Tri M. Mai

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-17 and 19 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 2-17 and 19 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Silvers et al. (D452455) in view of Krishnakumar et al. (5472105), and further in view of Krishnakumar et al. (5971184). Silvers teaches a container having a body portion with a closed bottom, a neck portion tapering inwardly, a closure-receiving finish portion, spaced apart pair of opposed gripping panels, and circumferentially spaced apart of inwardly projecting panels.

Silvers meets all claimed limitations except for the lateral extent of at least 4 in. and the space between the gripping panel being no more than 2-1/2 in.

It would have been obvious to one of ordinary skill in the art to make the lateral extent of at least 4 in. and the gripping panel being no more than 2-12 in. to provide the desired dimension for holding the contained product and the desired size for gripping the container.

Furthermore, Krishnakumar teaches that it is known in the art to provide a container having body portion with a lateral extent of at least 4 in. (col. 5, lines 50), and opposed gripping panels being no more than 2 1/2 inches apart (note d4 = .9 in, thus the distance between the two panels being 4 in. - 2(.9 in.) = 2.2 in.

It would have been obvious to one of ordinary skill in the art to make the container of Silvers in the dimension of Krishnakuma to provide the desired dimension for holding the contained product and the desired size for gripping the container.

Regarding claim 17, Krishnakumar '105 teaches the container can be made a plurality of layers. It would have been obvious to one of ordinary skill in the art to make the container out

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of a plurality of layers in Silvers as taught by Krishnakumar to provide the desired properties of the container. Furthermore, it would have been obvious to one of ordinary skill in the art provide an inner layer being PET to provide the desired property of the bottle.

To the degree it is argued that the panels in Silvers are not inwardly projecting panels. Krishnakumar '184 teaches that it is known in the art to provide inwardly projecting panels as shown in fig. 4. It would have been obvious to one of ordinary skill in the art to provide inwardly projecting panels in the modified container of Krishnakumar '105 as taught by Krishnakumar '184 to enable the hot filling process easily.

3. Claims 17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krishnakumar et al. (5472105) in view of Silvers et al. (D452455), and further in view of Krishnakumar et al. (5971184). Krishnakumar teaches a container having body portion with a lateral extent of at least 4 in. (col. 5, lines 50), and opposed gripping panels being no more than 2 ½ inches apart (note d4 = .9 in, thus the distance between the two panels being 4 in. - 2(.9 in.) = 2.2 in. Krishnakumar meets all claimed limitations except for the inwardly projecting panels, Silvers teaches that it is known in the art to provide inwardly projecting panels. It would have been obvious to one of ordinary skill in the art to provide inwardly projecting panels in Krishnakumar as taught by Silvers to enable the hot filling process easily.

To the degree it is argued that the panels in Silvers are not inwardly projecting panels. Krishnakumar '184 teaches that it is known in the art to provide inwardly projecting panels as shown in fig. 4. It would have been obvious to one of ordinary skill in the art to provide inwardly projecting panels in the modified container of Krishnakumar '105 as taught by Krishnakumar '184 to enable the hot filling process easily.

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Regarding claim 17, Krishnakumar '105 teaches the container can be made a plurality of layers. It would have been obvious to one of ordinary skill in the art to provide an inner layer being PET to provide the desired property of the bottle.

4. Claims 2-9, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kerr (D277551) in view of Krishnakumar '105, and further in view of Silvers et al. Kerr teaches a container having a pair of gripping panels. Kerr meets all claimed limitations except for the claimed dimensions of the container. Krishnakumar teaches that it is known in the art to provide a container with an internal capacity of 64 oz. It would have been obvious to one of ordinary skill in the art to provide the container with an internal capacity of 64 oz in Kerr as taught by Krishnakumar to provide the desired volume of contents for the consumer.

It would have been obvious to one of ordinary skill in the art to provide the container of Kerr having a lateral extent at least 4 in. and the gripping panels no less than 2.5 in as taught by Krishnakumar to provide the desired dimension of the container and the desired gripping size for holding the container.

With respect to the dimensions of the container and the gripping panels, it would have been obvious to one of ordinary skill in the art to provide the container in the claimed dimension to provide the desired volume and/or volume for the consumer. Such a modification would have involved a mere change in size and/or proportion. A change in size/proportion is generally recognized as being within the level of ordinary skill in the art. (see In re Rose, 105 USPQ 237 (CCPA 1955), and In re Tanczyn, 44 CCPA 704, 766, 241).

With respect to the inwardly projecting panels, Silvers teaches that it is known in the art to provide inwardly projecting panels. It would have been obvious to one of ordinary skill in the

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art to provide inwardly projecting panels in Kerr as taught by Silvers to enable the hot filling process easily.

5. Claims 10-16, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holmes (D308,167) in view of Krishnakumar '105, and further in view of Akiho (4805788) Holmes teaches a container having a pair of gripping panels at the neck portion. Holmes meets all claimed limitations except for the claimed dimensions of the container. Krishnakumar teaches that it is known in the art to provide a container with an internal capacity of 64 oz. It would have been obvious to one of ordinary skill in the art to provide the container with an internal capacity of 64 oz in Kerr as taught by Krishnakumar to provide the desired volume of contents for the consumer.

It would have been obvious to one of ordinary skill in the art to provide the container of Holmes having a lateral extent at least 4 in. and the gripping panels no less than 2.5 in as taught by Krishnakumar to provide the desired dimension of the container and the desired gripping size for holding the container.

With respect to the dimensions of the container and the gripping panels, it would have been obvious to one of ordinary skill in the art to provide the container in the claimed dimension to provide the desired volume and/or volume for the consumer. Such a modification would have involved a mere change in size and/or proportion. A change in size/proportion is generally recognized as being within the level of ordinary skill in the art. (see In re Rose, 105 USPQ 237 (CCPA 1955), and In re Tanczyn, 44 CCPA 704, 766, 241)

With respect to the inwardly projecting panels, Akiho teaches that it is known in the art to provide inwardly projecting panels as shown in 10. It would have been obvious to one of

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ordinary skill in the art to provide inwardly projecting panels in Krishnakumar as taught by Akiho to enable the hot filling process easily.

Response to Arguments

6. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (703)308-1038. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W Young can be reached on (703)308-2572. The fax phone numbers for the

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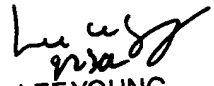
organization where this application or proceeding is assigned are (703)305-3579 for regular communications and (703)305-3579 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-1148.

Tri M. Mai
Examiner
Art Unit 3727



September 23, 2002



LEE YOUNG
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700